

A LIQUOR CONTROL COMMISSION REFERENCE MANUAL



FOR LAW ENFORCEMENT AGENCIES

MARCH, 2000

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Department of Labor & Economic Growth

q SECTION ONE: LICENSES AND PERMITS

% Introduction to the MLCC

In order to effectively work with licensees to enforce laws and prevent violations, law enforcement officials and licensees must understand those laws. This section begins with an introduction to the Michigan Liquor Control Commission and contains information concerning the liquor licenses and permits used in Michigan.

Commission

The MLCC was formed in 1933 with the repeal of Prohibition. The Commission is headed by five commissioners appointed by the governor with the consent of the Senate. Two of the commissioners are responsible for hearing violation cases. The other three are considered administrative commissioners and are responsible for licensing decisions as well as appeal hearings and much of the administrative work.

The work of the bureau is divided into several major functions, including:

- Ž Regulation: licensing, distribution, enforcement, hearings and appeals
- Ž Revenue collection: excise and specific taxes, license fees, etc.
- Ž Alcohol education
- Ž Executive/administrative support

Regulation

The MLCC is responsible for the regulation of the alcoholic beverage industry in Michigan. In this role it licenses retailers, wholesalers, and others associated with the alcoholic beverage industry. The MLCC also regulates the beer and wine industry including requiring wholesaler price quotations and regulating promotional activities. In conjunction with local law enforcement officers, the MLCC enforces the state's liquor laws as they apply to licensees of the Commission. The MLCC holds administrative hearings on violation cases and certain licensing matters, issues subpoenas for these hearings, and maintains violation statistics.

Michigan operates as an alcoholic beverage control state. Control is expressed through the MLCC acting as buyer of distilled spirits from manufacturers and importers and selling the spirits to retailers. Prices for package liquor (take out) are uniform throughout the state and based upon a legislatively prescribed formula. Beer and wine sales are distributed through the private sector with MLCC regulating the businesses involved.

Revenue Collection

The MLCC is one of the largest revenue producing state agencies in Michigan. MLCC Aprofits@stem from wholesale liquor sales and additional Commission revenue comes from the collection of beer, wine and liquor taxes, the collection of licensing fees and fines and costs associated with violations. Revenue from these sources fund Commission activities and make significant contributions to the General Fund. These revenues also help to fund local liquor law enforcement, the School Aid Fund, the Grape and Wine Council, substance abuse and alcoholism programs, and the Convention Facilities Fund.

Alcohol Education

The goal of the MLCC's alcohol education initiatives is to reduce the problems associated with alcohol abuse by working with specific target groups on problem issues. This book and law enforcement training program are examples of that effort.

Executive/Administrative Support

The administrative and executive support activities of the bureau include such functions as personnel, legislative analysis, operations analysis, etc. These activities are important to the overall effectiveness of the Commission's operations and are housed in different divisions throughout the bureau.

% **Liquor Control Code & MLCC Administrative Rules**

Liquor Control Code

The Liquor Control Code is section 436 within the Michigan Compiled Laws and is referenced as:
MCL 436.xxxx.

All parts of the Liquor Control Code are the result of legislation which has been approved by the Michigan Legislature and signed by the Governor.

MLCC and Administrative Code

Administrative rules are adopted by many state agencies to assist in the administration of legislation for which they are responsible. These rules are contained within the Michigan Administrative Code (MAC). Rules are adopted by state agencies only after following a process for promulgation of rules which includes holding one or more public hearings and approval by the Joint Administrative Rules Committee of the Legislature. In this text, references to the MLCC Administrative Rules are shown as:

MAC 436.xxxx or R436.xxxx.

The Legislative Service Bureau codifies both the laws and the administrative rules. In terms of regulation and penalties, the Rules of the Commission have the same impact as law.

Law and Rule Violations

When violation reports are submitted by police officers, they will be reviewed for completeness and a determination is made by the Assistant Attorney General/Liquor Division as to whether it appears that certain sections of the laws or rules of the commission have been violated. At that time, the Assistant Attorney General may cite any and all laws and rules that apply.

Alcoholic Beverages

The Liquor Control Code (MCL 436.1105(2)) defines **Alcoholic liquor** as any beverage containing one half of one percent or more of alcohol by volume. This includes beer, wine and distilled spirits. It also includes certain beverages that are mixed such as wine coolers or prepackaged mixed spirit drinks.

In this text, the word **Aliquor** may also be used to mean distilled spirits because that is a common term for an alcoholic beverage containing 21% alcohol or more by volume.

Publications Available From the MLCC

It may be helpful to have the following publications on hand for law enforcement reference and to provide to licensees and/or their employees. They are available from the MLCC Lansing office or can be downloaded from the MLCC web site at www.michigan.gov/dleg

Michigan Liquor Control Code, Rules, and Related Laws Governing the Sale and Manufacture of Alcoholic Beverages.

This is the exact language of the laws and rules of the MLCC. This publication covers all of the state's laws related to the alcoholic beverage industry. In addition to licensing and permit requirements and illegal activities the publication also includes such items as alcoholic beverage taxation, the bottle deposit laws and relevant employment statutes from the state's labor laws. (One book is issued to each police department at each publication. Additional copies are available to police departments upon request. The MLCC charges all others its printing cost of \$5.00, as required by statute.)

Law Enforcement Officers- Field Guide to Michigan's Liquor Laws and Rules of the MLCC.

This purple, pocket sized reference book contains statutory language and the MLCC rules that are most commonly violated by liquor licensees as well as tips for writing Violation Reports. (Copies of this reference are available to enforcement officers only by calling (517) 322-1370).

The Michigan Liquor Control Commission & Local Units of Government - A guide to the rights and responsibilities of local governments under the Liquor Control Code.

This booklet is designed for local government officials and provides information on the types of licenses and permits, local approvals required, objection to renewal or revocation of licenses, and other relevant information regarding the enforcement of Michigan's liquor laws. Booklets are available at no charge to local governments upon request (517) 322-1345.

Michigan Liquor Laws and Rules: A Guide for Retail Licensees.

This booklet is designed for retailers to help them understand the most common sections of the laws and rules for which they are held accountable. Booklets are available at no charge to licensees or police departments (517) 322-1345.

% Enforcement of Michigan's Liquor Laws and MLCC Rules

Authorities

In addition to investigators for the MLCC, the following law enforcement officers have authority to enforce Michigan's liquor laws (MCL 436.1201(4)):

- Ž Michigan State Police
- Ž County sheriffs and deputies
- Ž City and Township police officers
- Ž Village marshals, constables or police officers
- Ž State university and community college police officers

Anyone who has authority to enforce Michigan's liquor laws and rules may report alleged violations to the MLCC on the LC600 which is available for download from the web site or by calling 517-322-1370.

Inspections and Investigations

Investigators for the Commission and state or local law enforcement officers may inspect any licensed business that sells alcoholic beverages in order to determine compliance with Michigan's liquor laws. Inspections may be made without a search warrant during normal business hours or at any time when the premises are occupied. (MCL 436.1217)

Licensees and employees shall not obstruct a police officer or an investigator of the Commission who is investigating or inspecting the licensed premises while enforcing the Liquor Control Code or Commission Rules (MCL 436.1217 and R436.1011(3)). A licensee can be cited for violations of these sections.

% Summary of On-Premises License Information

On-premises License Type:	Sell Beer?	Sell Wine?	Sell Liquor?	Licensed to sell to:	Population Quota Applies?
Class C	Yes	Yes	Yes	General Public	Yes
Resort Class C	Yes	Yes	Yes	General Public	No
Club	Yes	Yes	Yes	Club Members	No
B-Hotel	Yes	Yes	Yes	General Public and in guest rooms	Yes
Resort B-Hotel	Yes	Yes	Yes	General Public and in guest rooms	No
A-Hotel	Yes	Yes	No	General Public and in guest rooms	Yes
Resort A-Hotel	Yes	Yes	No	General Public and in guest rooms	No
Tavern	Yes	Yes	No	General Public	Yes
Resort Tavern	Yes	Yes	No	General Public	No
Special License	Yes	Yes	Yes	General Public	No

% Summary of Off Premises License Information

Type of Off-premises License:	Local Legislative Approval?	Local Law Enforcement Investigation Required?
SDD & SDD Resort	No	Yes
SDM	No	Yes
Type of Off-premises Permit:		
Direct Connection	No	Yes
Living Quarters	No	Yes
Off-premises Storage	No	No
Sunday Sales - SDD	The county board of commissioners must have authorized the sale of liquor (distilled spirits) after 12:00 noon on Sunday. Beer and wine may be sold after noon on Sunday without special authorization from the MLCC C unless prohibited by local ordinances. *	
* Any questions regarding local referenda on liquor issues should be referred to the Commission because of the complexity of the laws and relevant court decisions.		

% Summary of Local Approval for On-Premises Licenses and Permits

<i>Type of On-premises License:</i>	<i>Local Legislative Approval?</i>	<i>Local Law Enforcement Investigation Required?</i>
Class C & Resort Class C Club	Yes - except Detroit ¹ No ²	Yes Yes
B-Hotel and Resort B-Hotel	Yes - except Detroit ¹	Yes
A-Hotel and Resort A-Hotel	Yes - except Detroit ¹	Yes
Tavern and Resort Tavern	Yes - except Detroit ¹	Yes
Special (24-hour)	No - except on state military bases	Yes

Type of On-premises Permit:

Specific Purpose Permit Food, Golf, Bowling, Ski ³	No	Yes
Dance	Yes ² - except in Detroit ¹	Yes
Entertainment	Yes ² - except in Detroit ¹	Yes
Topless Activity	Yes ² - except in Detroit ¹	Yes
Banquet Facility Permit	Yes ² - except in Detroit ¹	Yes
Additional Bar	No	Yes
Concourse	No	Yes
Outdoor Service	No	Yes
Living Quarters	No	Yes
Direct Connection to Unlicensed premises	No	Yes

Sunday Sales The county board of commissioners must have authorized sales of distilled spirits after 12:00 noon on Sunday, unless locally prohibited. ⁴ Individual governmental units may prohibit the sale of alcoholic liquor on Sundays by resolution or ordinance, but local approval is not needed specifically for a Sunday Sales permit. **By state law, beer and wine may be sold after 12:00 noon on Sunday without special authorization, but sales may be prohibited locally by referendum.**

- 1 Because of the number of licensed establishments in the city of Detroit, it has a specialized liquor investigation process which includes technical approvals for zoning and ordinance investigation. Therefore, the local legislative approval requirement has been waived for Detroit by state law. MCL 436.1501.
- 2 Although Club licenses do not require legislative body approval, local approval is needed for Dance, Entertainment and Topless Activity permits issued to Clubs. Clubs must meet all local zoning and code requirements. MCL 436.1916 and MAC R436.1105(3).
- 3 Restaurants and similar establishments may receive permission from the MLCC to operate at other hours as long as alcoholic beverages are sold only during legal hours. MAC R436.1437.
- 4 Any questions on local referenda for liquor sales should be referred to the Commission because of the complexity of the laws and relevant court cases.

% Licensing Requirements for On-Premises Licenses

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Quota Class C On-Premises License

Definition (MCL 436.1107(2))

A Class C license allows the licensee to sell beer, wine and distilled spirits for consumption by the customers on the licensed premises. This type of license is commonly associated with restaurants, bars and lounges.

Availability

Class C licenses may be obtained through a transfer of ownership of an existing license (at same location), a transfer of ownership and location, or as a new license if one is available under the quota. New Class C licenses may not be transferred for three years after issuance unless the licensee shows the Commission that unusual hardship will result if the transfer is not approved. General requirements must be met in order to receive a Class C license. They revolve around the location of the premises, the ownership of the business, personal qualifications, and financial requirements.

Location

- Ž Subject to the quota system.
- Ž The issuance of a license may be objected to by a church or school if its location would be within 500 feet of the church or school.
- Ž State and local codes must be met (e.g. fire, plumbing, sanitation)
- Ž Commission Rules that govern restroom facilities must also be met. Rule 436.1425.

Personal Qualifications

- Ž **Age** - All applicants, including stockholders, limited and general partners and members of limited liability companies must be 21 or over.
- Ž **Criminal Record** - All individual applicants, members of limited liability companies, and stockholders in privately held corporations must report to the Commission all arrests and convictions (except traffic tickets). Applicants must be fingerprinted by the local police.
- Ž **Past Operating Record** - An applicant's past operating record may be used to make a determination as to whether the applicant has proven to be a responsible and capable operator of an establishment.

Financial

The applicant for a on-premises license shall have a minimum down payment of 10% of the purchase price of the proposed licensed business (excluding the real estate and inventory). All funds used in the purchase of the licensed business must be from verifiable and legitimate sources. All applicants must provide all verification to the Commission as to those sources.

Ownership

After receiving a liquor license a business must maintain the same ownership. Any contemplated change in ownership must be reported to the Commission and approval must be received prior to making any changes of over 10% of the interest in the business. Those changes must be approved by the local law enforcement agency and any change over 50% of the interest must be approved by the local governmental unit.

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Quota Tavern On-Premises License

Definition (MCL 436.1113(1))

A Tavern license enables a business to sell **beer and wine** only for consumption on the licensed premise. Similar to a Class C license, this license can be found in restaurants, bars and lounges. The only difference is that a Tavern is not allowed to sell distilled spirits or allow the consumption of distilled spirits on the licensed premises.

Availability

Tavern licenses may be obtained through a transfer of ownership of an existing license (at same location), a transfer of ownership and location, or as a new license if one is available under the quota. General requirements must be met in order to receive a Tavern license. They revolve around the location of the premises, the ownership of the business, personal qualifications and financial requirements and are the SAME AS THOSE REQUIRED FOR A CLASS C LICENSE.

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Quota B-Hotel On-Premises License

Definition (MCL 436.1107(9))

B-Hotel licenses enable hotels to sell beer, wine and distilled spirits for consumption at a bar, in the dining and meeting rooms, and in the rooms of bona fide guests.

Availability

B-Hotel licenses may be obtained through a transfer of ownership of an existing license (at same location), a transfer of ownership and location, or as a new license if one is available under the quota. General requirements must be met in order to receive a B-Hotel license. They revolve around the location of the premises, the ownership of the business, personal qualifications and financial requirements and are the SAME AS THOSE REQUIRED FOR A CLASS C LICENSE.

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Quota A-Hotel On-Premises License

Definition (MCL 436.1107(8))

A-Hotel licenses enable hotels to sell **beer and wine only** for consumption at a bar, in the dining room and meeting rooms, and in the rooms of bona fide guests. The only difference is that an A-Hotel is not allowed to sell distilled spirits or allow the consumption of distilled spirits on the licensed premises.

Availability

A-Hotel licenses may be obtained through a transfer of ownership of an existing license (at same location), a transfer of ownership and location, or as a new license if one is available under the quota.

Requirements

The requirements for obtaining an A-Hotel license revolve around the location of the premises, the ownership of the business, personal qualifications and financial requirements and are the SAME AS THOSE REQUIRED FOR A CLASS C LICENSE.

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Brewpub License

Definition (MCL 436.1105(11))

Brewpub licenses are issued by the Commission in conjunction with an existing on-premises license (Class C, Tavern, A Hotel or B Hotel), authorizing the person to manufacture and sell at the licensed premises not more than 5,000 barrels of beer per year for consumption on or off the premises.

Availability

Brewpub licenses may be obtained if the applicant is a holder of an existing on-premises license, or is concurrently applying for a new on-premises license, or applying to transfer ownership of an existing on-premises license. Persons are prohibited from holding direct or indirect interest in more than three brewpubs and combined production cannot exceed 5,000 barrels. (MCL 436.1603(6))

Special Requirements

Ž **Manufacturing and Labeling (MCL 436.1405(4))** Beer shall be manufactured, identified and labeled in accordance with federal beer regulations published in Code of Federal Regulations (CFR) Title 27, part 7, subparts C and G. The manufacturing process and premises are also regulated by the Michigan Department of Agriculture, the US Department of Treasury and the BATF.

Ž **Product Registration (MCL 436.31b, Rule 436.1611)** All beer products must be registered with the Commission prior to their sale in Michigan.

Ž **Selling of Beer (MCL 436.1105(11))** By definition, Brewpubs are authorized to sell beer which they manufacture for consumption on their licensed premises or for take-out.

Ž **Food Service Establishment (MCL 436.31b, 436.31c)** Brewpubs are required to hold a Food Service Establishment license issued by the Public Health Department and they must maintain 25% of sales on food and non-alcoholic beverages.

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Resort Licenses

Definition

Resort licenses can be Class C, Tavern, B-Hotel and A-Hotel classifications. They are available only after all the licenses under the quota have been issued and if the businesses to be licensed will directly benefit tourism or visitors. *Applicants for a particular type of Resort liquor license must meet the qualifications for that type of license and as a Resort.*

Classifications and Restrictions

Ž **Transferable Resort Licenses (MCL 436.1531(2))** This classification is authorized to sell the same type of alcoholic beverages as the regular quota license (i.e. Class C and B-Hotel can sell beer, wine and liquor; A-Hotel and Tavern Resorts can only sell beer and wine). 550 licenses were authorized under legislation enacted in 1947. These licenses may transfer ownership, and location anywhere in the state with Commission approval.

Ž **Non-Transferable Resort Licenses (MCL 436.1531(3))** Are authorized to sell the same type of alcoholic beverages as the regular quota license. A specific number of licenses may be issued each year, depending on current legislation. These licenses may transfer ownership with Commission approval, but not location. The license must be returned to Commission if business ceases to operate. There must be an investment of at least \$75,000.00 in real property, improvements and fixtures.

Ž **Economic Development Resort Licenses (MCL 436.1531(4))** Are authorized to sell the same type of alcoholic beverages as the regular quota license. A specific number of licenses may be issued each year depending on current legislation. These licenses may transfer ownership with Commission approval, but not location. The license must be returned to Commission if the business ceases to operate. There must be at least a \$1,500,000 investment in the premises to be licensed including real estate, building, leasehold improvements, fixtures and inventory.

Additional Requirements

Requirements for all types of on-premises Resort licenses:

Ž The business must provide full-course meals (except A- and B-Hotel)

Ž The business must have seating for not less than 100 persons (except A- and B-Hotel). However, in counties having a population of less than 50,000, the business is not required to seat more than 50 persons. The Economic Development Resorts must seat 100 persons, regardless of location.

Ž The establishment must offer at least one of the following: Some type of public recreational or entertainment activity on the premises or in close proximity OR sleeping facilities, meeting or conference rooms, or convention facilities.

Ž The majority of the gross income of the business must be from activity other than the sale of alcoholic beverages (sale of food, greens fees, room rental, etc.).

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Club Licenses

Definition (MCL 436.1107(3))

A club license allows non-profit, private organizations to sell beer, wine and distilled spirits to bona fide members only. This classification of license is typically issued to groups or clubs such as VFW, Elks, American Legion, Knights of Columbus and Golf/Country Clubs.

Availability

Club licenses may be issued only to non-profit organizations. Club licenses are not subject to the quota limitations of the local unit of government.

Requirements

General requirements must be met in order to receive a Club license. They revolve around the location of the premises, the ownership of the business, club qualifications and financial requirements.

Location

Ž The issuance of a license may be objected to by a church or school if its location would be within 500 feet of the church or school.

Ž State and local codes must be met (e.g. fire, plumbing, sanitation)

Ž Commission Rules that govern restroom facilities must also be met. Rule 436.1425.

Club Qualifications

The organization must:

Ž Be non-profit.

Ž Submit an affidavit certifying that there are no racial qualifications for membership.

Ž Be self-supporting without the sale of alcoholic beverages.

Ž Be structured so that no individual can receive the profits of the organization.

Ž Wait two years after being formed to apply for the license, unless the local organization is a member of a national organization, which has had a license for at least 10 years.

Ž Have a board of directors, or similar body, chosen by the members.

Note: During the investigation process, enforcement investigators will examine the club charter, the by-laws, the articles of incorporation (if any) and the minutes for the past two years. If the club is a corporation, it must be authorized to do business in Michigan.

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Special License

Definition (MCL 436.1111(10))

A Special License, also known as a 24 hour license, allows non-profit organizations to obtain a one day license to sell alcoholic beverages (beer, wine and spirits) to the public for on-premises consumption. Consecutive day events may be granted under one application, however a separate license fee is required for each day.

This type of license is commonly associated with beer tents, fund raisers or millionaire parties for charity at which alcohol is served and consumed.

Availability

Special licenses may be issued only to non-profit organizations. No organization, including its auxiliaries, may receive more than five Special Licenses during one calendar year. It is not subject to the quota. General requirements must be met in order to receive a Special License. They revolve around the location of the event, the non-profit status of the organization and approval of local law enforcement.

Location

~ No Special License may be issued on the premise of, or within 500 feet of, a church or school without the applicant obtaining approval from the authorized representative of that church or school.

~ No Special License may be issued for locations on a military installation without the approval of the Armory Board of Control and the legislative body of the local governmental unit.

~ A detailed diagram of the area to be licensed must be provided to the MLCC and to the local law enforcement office.

Forms and Documents

~ Applicant must fill out proper application (LC-510).

~ 60 day acceptable bond is required with each application.

~ Sunday Sales Affidavit needed if the event is held on a Sunday and spirits are to be sold.

~ Local law enforcement approval is required.

% Licensing Requirements for Off-Premises Licenses

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Specially Designated Distributor (SDD) License

Definition (MCL 436.1111(11))

An SDD license permits the licensee to sell packaged liquor (distilled spirits) for consumption off the licensed premises. Types of businesses which generally have SDD licenses are grocery stores, drug stores or party stores.

Availability

SDD licenses may be obtained through a transfer of ownership of an existing license (at the same location), a transfer of ownership and location, or as a new license if one is available under the quota. New SDD licenses may not be transferred for 3 years after issuance unless the licensee clearly and convincingly shows the Commission that unusual hardship will result if the transfer is not approved.

Requirements

General requirements must be met in order to receive an SDD license. They revolve around the location of the premises, the ownership of the business, approved type business and financial requirements.

Location

- Ž Subject to the quota system
- Ž Issuance of a license may be objected to by a church or school, if its location would be within 500 ft. of that church or school.
- Ž SDD licensed locations must be at least one-half mile (2640 feet) from each other with certain exemptions contained in Rule 436.1133.
- Ž SDD licenses will not be issued to any business which sells gasoline. Exceptions may be made at locations in a local unit of government that is sparsely populated (See MCL 436.1541(3) for exceptions in full).
- Ž SDD licenses will not be issued to an applicant who operates a drive-through or drive-in with the sale of alcoholic beverages. Also, an SDD license holder may not change the nature of the business to a drive-through or drive-in once the license has been issued. Only Transfer Ownership SDD-s can allow the sale of alcoholic beverages through a drive in window where it has been previously approved (grandfather clause).
- Ž State and local codes must be met (e.g. fire, plumbing, sanitation)
- Ž Permission for drive up windows without the sale of alcoholic beverages are allowed under certain conditions.

Personal Qualifications

- Ž **Age** - All applicants, including stockholders, limited and general partners and members of limited liability companies must be 21 or over.
- Ž **Criminal Record** - All individual applicants, members of limited liability companies, and stockholders in privately held corporations must report to the Commission all arrests and convictions (except traffic tickets). Applicants must be fingerprinted by the local police.
- Ž **Past Operating Record** - An applicant's past operating record may be used to make a determination as to whether the applicant has proven to be a responsible and capable operator of an establishment.

Financial

All funds used in the purchase of the licensed business and real estate must be from verifiable and legitimate sources. All applicants must provide all verification to the Commission as to those sources.

Ownership

After receiving a liquor license a business must maintain the same ownership. Any contemplated change in ownership must be reported to the Commission and approval must be received prior to making any changes of over 10% of the interest in the business. Those changes must be approved by the local law enforcement agency.

Approved types of Businesses

In order to be considered for a new quota SDD license, the applicant must operate one of the following approved type businesses:

- | | |
|-------------------------|---|
| a) grocery store | g) patent medicine store |
| b) party store | h) tobacconist |
| c) food specialty store | i) florist |
| d) meat market | j) A department store that includes at least one of |
| e) delicatessen | the stores listed above |
| f) drugstore | |
| k) hotel | |

& &

Specially Designated Merchant (SDM)

Definition (MCL 436.1111(12))

An SDM license allows the sale of beer and wine for consumption off the premises. Spirits may not be sold or stored if the establishment only holds an SDM license.

Businesses that typically hold SDM licenses are grocery stores or party stores. This classification can be held in conjunction with all other retail licenses, except a Special license.

Availability

SDM licenses may be obtained through a transfer of ownership of an existing license (at same location), a transfer of ownership and location, or as a new license. SDM licenses are not subject to quota.

Requirements

General requirements must be met in order to receive an SDM license. They revolve around the location of the premises, the ownership of the business, SDM qualifications and financial requirements.

Location

Ž SDM licenses will not be issued to any business which sells gasoline. Exceptions may be made at locations in a local unit of government that is sparsely populated (See MCL 436.1541(3) for exceptions in full).

Ž SDM licenses will not be issued to an applicant who operates a drive-through or drive-in with the sale of alcoholic beverages. Also, an SDM license holder may not change the nature of the business to a drive-through or drive-in once the license has been issued. Only Transfer Ownership SDMs can allow the sale of alcoholic beverages through a drive in window where it has been previously approved (grandfather clause).

Ž State and local codes must be met (e.g. fire, plumbing, sanitation)

Ž Permission for drive up windows without the sale of alcoholic beverages are allowed under certain conditions.

Personal Qualifications

Ž **Age** - All applicants, including stockholders, limited and general partners and members of limited liability companies must be 21 or over.

Ž **Criminal Record** - All individual applicants, members of limited liability companies, and stockholders in privately held corporations must report to the Commission all arrests and convictions (except traffic tickets). Applicants must be fingerprinted by the local police.

Ž **Past Operating Record** - An applicant's past operating record may be used to make a determination as to whether the applicant has proven to be a responsible and capable operator of an establishment.

Financial

All funds used in the purchase of the licensed business and real estate must be from verifiable and legitimate sources. All applicants must provide all verification to the Commission as to those sources.

Ownership

After receiving a liquor license a business must maintain the same ownership. Any contemplated change in ownership must be reported to the Commission and approval must be received prior to making any changes of over 10% of the interest in the business. Those changes must be approved by the local law enforcement agency.

Approved types of Businesses

In order to be considered for a new SDM license, the applicant must operate one of the following approved type businesses:

- | | |
|--------------------------|---|
| a) grocery store | j) A department store that includes at least one of the stores listed above |
| b) party store | k) Specially Designated Distributor (SDD) |
| c) food specialty store | l) Class C |
| d) meat market | m) Class B-Hotel |
| e) delicatessen | n) Club (Sales to member only) |
| f) drugstore | o) Tavern |
| g) patent medicine store | |

h) tobacconist
i) florist

p) Class A Hotel

& & Specially Designated Distributor (SDD) Resort License

Definition

The Liquor Control Commission may grant a limited number of liquor licenses in Michigan to stimulate economic development and the tourist convention business. Resort licenses are available only after all the licenses allowed under the quota are issued. If an applicant receives an SDD Resort license, the business must operate under the guidelines established for SDD licenses.

Restriction

Applicants for an Off-Premise Resort license must meet the qualification as described for an SDD applicant on the preceding pages. However, applicants for resort licenses may be considered even if the proposed location is within 2640 feet (1/2 mile) of an existing SDD.

& & Permits

Sunday Sales

A Sunday Sales permit allows the sale of liquor (distilled spirits) between noon and midnight on Sunday if permitted by the local government. For on-premises (Class C, B-Hotel and Club), off-premises (SDD), and resort (Class C, B-Hotel and SDD) licensees. *Note: No permit is needed for beer and wine sales after noon on Sunday. Also, Sunday Sales permits will not be granted if the local ordinance specifically forbids it.*

Official Permit for the Sale of Food

An Official Permit for the Sale of Food allows a licensed business with a full service kitchen to remain open for the **sale of food only** before or after the legal hours. The licensee must specify the hours of operation. Alcoholic beverages may not be sold or consumed on the premises during this period. *Available to all on-premises licensees require local police approval. Local legislative body approval is needed if the area is on property owned by the governmental unit.*

Official Permit for Bowling

An Official Permit for Bowling allows only bowling on the licensed premises before or after the legal hours. The licensee must specify the hours of operation. Alcohol may **not** be sold or consumed during this time. *Available to all on-premises licensees with bowling lanes and local police approval is required.*

Additional Bar

An Additional Bar permit is required for each extra bar where customers may buy or consume alcoholic beverages. *Required for all on-premises licensees except taverns, clubs and special licenses.*

Official Permit for Registration of Skiers

An Official Permit for Registration of Skiers allows the licensed premises to be occupied only for the registration of skiers before or after the legal hours. The licensee must specify the hours of operation. Alcoholic beverages may not be sold or consumed on the premises during this period. *Available to all on-premises licensees and local police approval is required.*

Official Permit for Registration of Golfers

An Official Permit for the Registration of Golfers allows the licensed premise to be occupied only for registering golfers before or after the legal hours. The licensee must specify the hours of operation. Alcoholic beverages cannot be sold or consumed on the premises during this period. *Available to all on-premises licensees and local police approval is required.*

Living Quarters Permit

A Living Quarters permit allows living quarters to be directly connected to the licensed premises. *Available to both on or off premises licensees and local police approval is required.*

Direct Connection

A Direct Connection permit is required when the licensed business is directly connected to any unlicensed area. *Available to both on or off premises licensees.*

Dance

A Dance permit allows dancing by patrons in a designated area. The dance floor must be well defined, clearly marked and unobstructed when customer dancing is permitted. *Available to all on-premises licensees. Approval of local police is required in Detroit. Approval of local police and legislative body is required in all other areas. Licensees may only allow dancing during legal hours for the sale of alcoholic beverages.*

Entertainment

An Entertainment permit allows monologues, dialogues, movies, slides, contests, and dancing by employees or performers, and permits certain types of live or electronically reproduced entertainment. This permit is not needed for playing of most types of musical instruments, nor for showing public TV. *Available to on-premises licensees, approval of local police and legislative body is required. Licensees may only allow entertainment during legal hours for the sale of alcoholic beverages.*

Topless Activity Permit

This permit allows topless activity by employees and patrons on-premises. *Local police approval is required in Detroit. Local police and local legislative body approval is required in all other locations. Available to all On-Premises licensees. Licensees may only allow topless activity during legal hours for the sale of alcoholic beverages.*

Outdoor Service

An Outdoor Service permit allows the sale, service and consumption of alcoholic beverages in a well-defined and clearly marked area outside of the licensed premises. *Local police approval is required. Available to all On-Premises licensees.*

Miscellaneous

Other specific purpose permits may be issued on a case-by-case basis where the premises are used at times when alcohol cannot be sold or consumed (e.g. racquetball or tennis). These requests are considered on an individual basis. It is also important to note that only the activity permitted by the specific purpose permit may occur on the licensed premises during the specified hours. *These permits are available to all on-premises licensees and require local police approval.*

Reading a License

Definition (MCL 436.1107(10))

A license is a contract between the Commission and the licensee, allowing the licensee to manufacture, warehouse or sell alcoholic beverages.

Components of a License

Each license consists of a few standard items with which the law enforcement community should be aware.

- Ž State seal of authentication
- Ž The effective date of the license
- Ž Permits that may be included in the license
- Ž Licensee's name and signature
- Ž Business ID Number * Please include this on the Violation Report. *
- Ž Doing Business As (DBA) and Address
- Ž License number and classification and all Conjunctive Licenses

Abbreviations

Law Enforcement Officers should also be able to recognize different abbreviations used by the Commission on licenses and permits. Common license and permit codes include:

LICENSES		PERMITS	
Abbreviation	Description	Abbreviation	Description
CLASSC	Class C	SS	Sunday Sales
TAVERN	Tavern	DANCE	Dance Permit
B HOTL	B-Hotel	ENT	Entertainment Permit
A HOTL	A-Hotel	DANCE - ENT	Dance/Entertainment
CC RES	Class C Resort	ENT - WO	Entertainment without dressing rooms
BH RES	B-Hotel Resort	LIV-Q	Living Quarters
T RES	Tavern Resort	DIR-CON-#	Direct Connection
AH RES	A-Hotel Resort	OFFPREM	Off-Premise Storage
WAT CR	Water Craft	GAS PUMP	Gas Pumps
AIRCR	Air Craft	FOOD	Official Permit Food
TRAIN	Train	GOLF	Official Permit Golf
CLUB	CLUB	BOWLING	Official Permit Bowling
SDD Resort	Resort SDD	OD-SERV	Outdoor Service
SDD	Specially Designated Distributor	MISC1 or 2	Miscellaneous
SDM	Specially Designated Merchant	TLESSACT	Topless Activity

Names on License

A license may be listed under the name of a corporation, limited liability company, limited partnership, an individual or a combination of these entities. Sometimes, law enforcement officers will find it necessary to know the names of stockholders if the license is listed under a corporation's name. The MLCC has records of all stockholders of all licensed corporations on file and should be contacted when such information is needed.

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Faming and Displaying

MLCC rules state that a licensee must frame all licenses under transparent material, sign the licenses, and display them prominently in the licensed premises. A permit must also follow the above guidelines and must be displayed adjacent to the liquor license. R 436.1015.

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The Quota System

On-Premises Quota

On-premises licenses are restricted to 1 license for each 1500 of population or major fraction of 1500. A census report is the instrument used for determining actual population for each governmental location.

Example:	Population of 900	=	1 license
	Population of 1600	=	1 license
	Population of 2251	=	2 licenses
	Population of 3751	=	3 licenses, etcY

Factors Influencing the Number of Available Licenses

There are many conditions that may change the number of licenses available within a local governmental unit. They include the following:

- Ž A special or decennial censusCor annexationCmay make additional licenses available.
- Ž A canceled or revoked license may create an opening in the number of licenses available.
- Ž An application that has been allocated or approved by the MLCC is subsequently cancelled for any reason and the license is not issued.
- Ž The number of un-issued licenses declines because the population declines

Issuing New Quota Licenses

If there are openings in the quota system for on-premises licenses, the applicant must first apply to the local unit of government for consideration of approval for the quota license.

Filling Quota Openings

The legislative body has the responsibility to decide whether to fill the quota. They may choose to fill all, some, or none of the available openings. If they choose to fill the quota, and there are a number of on-premises license applicants, they must send to the Commission a resolution as to which individual(s) they choose above others for the available license(s). The Commission will not authorize an investigation of an applicant for a new on-premises quota license until that resolution is received.

The MLCC cannot approve an application for an on-premises license subject to the quota, without the approval resolution of the local legislative body prior to application to MLCC. However, there is no statutory requirement that a local unit of government must authorize issuing any or all licenses available under the quota. Likewise, a local unit of government is not required to approve any of the applicants that request consideration for approval.

Off-Premises Quotas

The only off-premises license subject to the quota system is the SDD license. One license for every 3000 in population or fraction thereof is issued. SDM licenses, which sell beer and wine for take-out are not subject to a quota.

For example:			
Population of 3000 or less	=	1 SDD license	
Population of 3001	=	2 SDD licenses	
Population of 6000	=	2 SDD licenses	
Population of 6001	=	3 SDD licenses, etc.	

Similar to on-premises licenses, the Commission determines the number of SDD licenses available under the quota through a variety of censures.

Waiving the Quota Requirement

The Commission may waive the quota requirement of the SDD license if the quota has been filled and there is no existing SDD license within two miles of the proposed location measured along the nearest traffic route. MCL 436.1533

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Objections to Renewal & Revocation

Licenses Subject to this Action

Because local units of government are required to approve public on-premises licenses, they may also object to a renewal or request the revocation of Class C, A-Hotel, B-Hotel and Tavern licenses.

Local governments may also request revocation of off-premise SDD and SDM licenses in their jurisdiction when: 1) the Commission has determined that the licensee has violated the Liquor Control Code by selling or furnishing alcohol to a person under 21 years of age on at least 3 separate occasions in a single calendar year and 2) those violations did not involve the use of false or fraudulent identification by the person under 21 years of age. MCL 436.1501(3)

If a local unit of government objects to renewal or requests revocation of an on-premises retail license, and the licensee also has an off-premises SDM license, the Commission will also hold a show cause hearing to determine if there is any reason that the SDM license should not be renewed or revoked at the same time because the business no longer meets the licensing qualifications. Objections MUST be filed with the MLCC at least 30 days prior to license renewals (April 30).

Due Process

The Michigan Supreme Court has ruled that a licensee has a property interest in the license and therefore is entitled to due process protection. This creates a need for local governmental units to establish and follow procedures and standards that reflect the court's due process ruling. The following should be considered when objecting to a renewal or a requesting a revocation of a liquor license. *Bundo v. City of Walled Lake* (395 Michigan 679 1976).

1. **Guidelines** - The local governmental unit must establish standards or guidelines stating what conditions will constitute a basis for requesting non-renewal or revocation of license.
2. **Notification of Guidelines** - The local governmental unit must notify licensees of the guidelines and any subsequent changes.
3. **Notification of Hearing** - If the local governmental unit is objecting to renewal or requesting revocation of a license, it must give the licensee timely written notice of the hearing, including:
 - A. Date and location of hearing
 - B. Reasons for the proposed action
 - C. Licensee's rights at the hearing, including the opportunity to defend by confronting any adverse witnesses and by being allowed to present witnesses, evidence, and arguments and their right to be represented by an attorney.
4. **Hearing** - At the local legislative body hearing, the licensee must be given an effective opportunity to defend themselves by confronting any adverse witnesses and by being allowed to present witnesses, evidence, and arguments.
5. **Resolution and Statement of Finding** - After the hearing, the local legislative body must make a written statement of finding and adopt a resolution.

Documentation

The local unit of government must send the following documents to the MLCC before the Commission can take any action regarding objection to renewal or revocation of a license and at least 30 days prior to license renewals (April 30):

1. Copy of the standards or guidelines - including the date of adoption and, if applicable, the date of publication.
2. Certified copy of the notice sent to licensee.
3. Proof of service or proof of mailing of the notice.
4. Certified copy of the resolution that was adopted by the local governing body objecting to the renewal of the license or requesting that the license be revoked.

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Differences Between Objection to Renewal and Revocation

Objecting to the Renewal of a License

When the proper documentation is received, MLCC will stop renewal of the license. The existing license expires on April 30, preventing the licensee from legally selling alcoholic beverages after that date. The license will remain in escrow for one year, and cannot be placed in operation or transferred to another person or corporation unless the local legislative body adopts a resolution approving renewal or transfer (the approving resolution may be submitted at any time during the year and the license may be removed from escrow).

After one year, the licensee may request an extension but the request may or may not be approved by the Commission. If the extension is denied and upheld on any appeals to the Commission and/or Court, the license is permanently canceled. If an extension is granted, the license remains in escrow for the extension period granted by the Commission but cannot be placed in operation or transferred to another person unless the local legislative body adopts a resolution approving renewal or transfer.

There is no immediate effect on the local license quota as a result of objecting to a renewal as long as the on-premises retail liquor license is held in escrow. It still counts towards the limited number of licenses available in the city, township or village.

Revocation of a License

A resolution requesting revocation of a retail liquor license may be submitted at any time. When proper documentation is received, the Commission is required by law (MCL 436.1501(3)) to hold a hearing to consider the resolution. The local legislative body will be notified of the hearing and a representative of the body or its legal counsel should attend. The sole purpose of this hearing is to determine if the licensee was afforded Arudimentary due process@as required by the courts. If it is found that due process was given to the licensee, the license is immediately revoked by the MLCC unless the Commission is restrained from doing so by Court action. Revocation is a permanent action, and means that the licensee loses all ownership rights in the license. The licensee cannot transfer the revoked license.

License revocation can also have long term effect on the number of licenses available under the quota in the local governmental unit. If the city, township or village is over the license quota (due to a drop in population base), then revocation of the license means that there is one less license available.

For example, if a city is authorized to have 10 on-premises licenses and currently has 11 (due to a past larger population), then revocation means there will only be 10 licenses available in the city.

Transfers

Transfer of Ownership

Partly because of the quota system, retail liquor licenses have become highly sought after in some locations. Most licenses may be transferred from one owner to another. When a liquor license or an interest in a liquor license is conveyed from one person to another, a transfer has occurred. This could be a partial ownership change or a complete buyout from a new owner. Applicants for transfer for each license must undergo the same investigation and application process and meet the same requirements as the applicants for a new license. New owners of an existing licensed establishment must be approved by the MLCC. Also, a proposed new location for an establishment must meet all state and local zoning requirements.

Transfer of Location

Any retail license, except most Resort Licenses, may be transferred to another location within the governmental unit in which it is issued. Prior to moving a license, approval must be granted by the local police, the MLCC and local governmental unit for on-premises licenses. The new location must meet all current codes and requirements.

Restrictions Placed on Transfers

Liquor license transfers are subject to the criteria applied to new license applicants, and the review process is similar to that used for a new application.

Any sale or transfer of more than 10% of the stock in a corporation or 10% interest in a limited partnership or limited liability company licensed to sell alcoholic beverages in Michigan must be approved by the MLCC prior to any business transactions occurring. All transfers of stock, membership and limited partner interest must be reported to the MLCC. (MCL 436.1529(1) All stock transfers must be reported to the MLCC prior to July 1 annually. Rule 436.1047

License Application Review

Local Police Role

The formal review by local law enforcement officers in the license application process is very important. Most license applications (as well as most Special Activity Permits) must be reviewed by local police for compliance with zoning requirements and local ordinances (See LC-1800 report in the appendix). In many cases the mandatory approval by local law enforcement officers is not required for the applicant to be approved by the MLCC, but the Commission gives great weight to the local law enforcement recommendation.

Note: A clear objection to an application on the basis of non-compliance with local zoning codes or a violation of local ordinances will cause MLCC to deny approval, or approve the application subject to a final inspection by local officials and compliance with codes. Receipt of a copy of such codes and ordinances may be requested by the MLCC for license denial.

Fingerprinting

Local Police are also asked to take fingerprints of each person who is a partner, member or stockholder, who owns 10% or more, in the business applying for the license. All general partners of limited partnerships are fingerprinted. The fingerprint cards should be returned to the MLCC with a \$15 check made payable to the State of Michigan. The fingerprints are forwarded to the Michigan State Police for a criminal background check. **Note: Use only State Police identification cards when fingerprinting applicants. Do not use FBI cards.**

Communicating with Local Legislative Body

Local Police are encouraged to communicate with their the legislative body. In particular, local police should rely on local inspectors to point out any possible zoning or local ordinance problems with the location or structure of the proposed retail liquor establishment. The police approval can be subject to a Final Inspection.

Considerations

Additionally, relevant comments from local law enforcement agencies regarding any applicant for a retail liquor license are considered by the MLCC as part of the application review process. Valid concerns raised by local police, who are familiar with the community, its ordinances and zoning requirements, and who also may be familiar with the applicants background, are taken into consideration by the MLCC.

LC-1800 Form

Prior to a new license being issued or a transfer approval, police will receive a request for an investigation of the proposed licensee(s) and establishment. The report that police use is called the Police Inspection Report on Liquor License Request also known as the LC-1800 form or the LC-1802 in the City of Detroit. Police will need to investigate the following items:

- 1.) Applicant
- 2.) Business
- 3.) Local and State Codes and Ordinances

A recommendation for the applicant should only occur after all requirements on the form have been met. If the applicant does not meet all necessary requirements of Local and State Codes and Ordinances, then they may be recommended subject to the requirements being completed.

LC-693N Form

If an applicant is seeking a Dance, Entertainment, or Topless Activity permit, law enforcement officers must complete a LC-693N form. This form is specific to Dance, Entertainment and Topless Activity permits.

LC 1112 Form

This form is used is an applicant is requesting any Official Permit which will allow the licensed business to remain open at hours other than legal hours for the sale of alcoholic beverages. The hours requested should be completed before the form has been released to the local police.

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Miscellaneous Laws and Rules

Renewal by May 1

Retail liquor licensees must renew before May 1 of each year. MLC 436.1501(2)

Altering Premises

Licensees may not alter the size, or lease a portion of the licensed premises without first obtaining approval from the MLCC. Rule 436.1023

Closed Business

If a licensed business is closed for more than 30 days, the license must be sent to MLCC for escrow. Rule 436.1047

Dram Shop Liability/Insurance

Because sales of alcoholic beverage to minors or visibly intoxicated persons can result in a civil liability for retail licensees in Michigan, all applicants for a liquor license must show proof of financial responsibility equal to at least \$50,000 before a license is issued. MCL 436.1803.

q SECTION TWO: ENFORCEMENT

By far, the most frequent reason for violation reports being written and judgments being rendered against retail liquor licensees in Michigan is the sale or furnishing of alcohol to people under the age of 21.

In this section, we review the process of establishing a violation and instituting decoy operations. In addition, this section covers the identification of intoxicated persons, hours of sale for licensed businesses, and some common violations.

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Minors

Definition of a Minor

For the purpose of buying, possessing or consuming alcoholic beverages for personal use, a minor is defined by law as someone who is less than 21 years of age. MCL 436.1801(2)

For the purpose of selling or serving alcohol, a minor is defined by law as a person who is under 18 years of age. Youth Employment Standards Act: MCL 409.102

Laws and MLCC Administrative Rules

Licensees may not sell or furnish alcohol to anyone under 21 years of age. Michigan Constitution, Article 4; MCL 436.1801(2) and MCL 436.1701(1)

Licensees may not allow a person under 21 years of age to consume or possess alcoholic beverages for personal consumption on the licensed premises. MCL 436.1701(1) and Rule 436.1009

Licensees may not allow a person who is less than 18 years of age to sell or serve alcoholic beverages. Rule 436.1009

Police Authority

Under the Liquor Control Act MCL 436.1705, law enforcement officers are permitted to Astop and detain the person (who is thought to be in violation of MCL 436.1703(1)) for purpose of obtaining satisfactory identification, seizing illegally possessed alcoholic beverages, and issuing an appearance ticket.® This section gives police officers the power to provide the necessary evidence as stated in this chapter.

Penalties

There are serious penalties for selling or furnishing alcoholic beverages to minors.

Ž Misdemeanor - A liquor licensee or employee of the licensee who sells or furnishes alcohol to a minor may be found guilty of a misdemeanor. Michigan Constitution, Article 4; MCL 436.1701(1)

Ž MLCC Violation/Fines, Suspensions, Revocations

Ž A licensee who sells or furnishes alcoholic beverages to a minor is liable for a fine up to \$1000, suspension, or revocation of the license (under MCL 436.1801(2) only).

Ž A licensee who allows a minor to consume alcoholic beverages on the licensed premises is liable for fine up to \$300, suspension, or revocation of the license. (Rule 436.1009)

Ž All licensees found liable, within a 24 month period, for 3 or more separate violations of section 436.1801(2) in the Liquor Control Code, with the violations occurring on different occasions are required to attend a penalty hearing at which the Commission must revoke or suspend the license.

Ž Any violation of the Liquor Control Code or Administrative Rules may result in suspension or revocation.

Ž Local Government Request to Revoke - Additionally, a local unit of government can request that the MLCC revoke the license of an off-premise licensee who has been found guilty of selling alcoholic beverages to minors on three separate occasions in one calendar year.

On the Violation Report

The major concerns for establishing a violation of serving or selling to minors are: 1) the age and identity of the suspected minor; and 2) proving that the beverage purchased or consumed was alcohol. Shown directly below are suggested guidelines that enforcement officers should follow in order to increase the likelihood of obtaining a conviction of a licensee for a violation of the Liquor Control Code or the MLCC Administrative Rules.

Sale of Alcoholic Liquor To a Minor

1. List names, addresses and birth dates of all persons under 21 years of age who were observed buying, possessing or consuming alcoholic beverages.
2. Also list the names and addresses of any persons in the company of the minor who were involved in the sale or furnishing of alcoholic beverages to the underage person, or who witnessed the transaction.
3. List documentary evidence used to determine the minor's correct age: bona fide driver's license, Law Enforcement Information Network or other ID. Include the date of birth and age of the minor named in the report.
4. If the sale or transaction was not witnessed directly by the officer, attempt to have the underage person (or those accompanying the minor) identify the establishment and the person who sold or furnished the alcoholic beverage. This should be done as soon as possible after the minor is detained. If feasible, compare price labels on identical or similar merchandise in the identified report.
5. If an officer saw the violation, check young person's age and documents in the presence of the licensee or employee. Report licensee or employee's remarks.
6. Seize the alcoholic beverage purchased or possessed by the underage person, and indicate the type and brand. List the articles confiscated to be used as evidence at the hearing. Be prepared to prove that the beverage that the minor purchased or was drinking contained alcohol, unless it is in the original, unopened container. If the minor is observed drinking the beverage from (or poured from) a container clearly marked as an alcoholic beverage, no laboratory analysis is needed. However, if it is not known whether or not the beverage being consumed is alcoholic, lab analysis should be done. Service or consumption of alcoholic beverage can be established by:
 - ☑ taking a sample (pour into evidence container) and removing ice. Send to the toxicology lab as soon as possible. *Note: If an officer is not carrying an evidence container, they should confiscate the opened bottle or glass being consumed from as evidence and send it to the toxicology lab as soon as possible.*
 - ☑ Seizing unopened container
 - ☑ Observing preparation from bottle or tap
7. Report attempts by a minor to misrepresent age. If possible, confiscate the false identification used.
8. Describe any means used by licensee or employee to inquire as to the age of the purchaser. State whether the minor was asked for ID and whether it was shown to the licensee. Commissioners may take into account the efforts of the licensee to follow through with diligent inquiry of the purchaser's age.
9. Advise licensee as soon as possible of the violation(s). CHARGE MINOR (MCL 436.1703) and include a copy of the appearance ticket issued to the underage person or proof that the person was arrested for a criminal charge (or proof of warrant taking enforcement action). It is not necessary to wait for a conviction.

Sales By Person under 18

1. Actually purchase alcoholic beverage from the person under 18.
2. Establish identity of the minor (i.e. age, birth date and address)
3. Advise licensee of the violation(s)

Decoy Operations

The Michigan Court of Appeals upheld the use of decoys in State of Michigan vs. Reynolds, et al, Docket No. 71216, decided October 23, 1984.

Note: The following are suggested guidelines and are not to be construed as requirements of the MLCC.

1. Use youthful looking decoys who are age 18 or 19. The decoys should not appear older than they are or wear disguises of any kind.
2. The decoys name, date of birth and age should be included on the violation report. Address information should be included UNLESS the department maintains a current address on the minor until the hearing is held. If that is the case, the address of the police department writing the violation is sufficient.

NOTE: The Department may refer to the decoy as a number if the name and address of the decoy are not used in the report for the safety of the decoy. The department is then responsible for making sure that the decoy is at the violation hearing.

3. Take a photo of the decoy before each operation to show the decoy's appearance and the clothing worn. The picture should be available at the MLCC hearing. (A Polaroid picture is sufficient.)
4. Ensure that the decoy will be available for MLCC hearings and court for at least six months after the decoy operation.
5. Give the decoy specific instructions on conduct expected of him or her during the operations. These directions may include:
 - ✓ Have the decoy sign an acknowledgment form in writing indicating that certain instructions have been given and are understood. The form should be kept on file with the police agency.
 - ✓ No consumption of alcoholic beverages by the decoy
 - ✓ The decoy is to be truthful in all conversations or in answers to questions asked by the licensee or sales clerk of the retail establishment. The decoy should use no deception.
 - ✓ The decoy should either possess valid identification or no ID at all. The police agency should check the decoy prior to the operation to ensure that the decoy is carrying no false or misleading identification.
 - ✓ The decoy should immediately record the details of the transaction in a report or form. This form should be kept with the agency copy of the complaint.
6. An internal and/or external observation of the decoy operation by the officers should be conducted. Minimally, an external observation of the purchase at an off-premises establishment should include the decoy entering the establishment empty handed and exiting with alcoholic liquor. Internal observations should always take place at an on-premises operation.
7. A police officer or other person of legal age should not be in close proximity of the decoy where the vendor may presume that the decoy is in the company of the older person.
8. The decoy should be allowed to take physical possession of the alcoholic beverage before any enforcement is initiated.
9. For on-premises operations, only bottled or canned beer should be ordered. A sample of the beverage should be obtained.
10. After the purchase, an officer should enter the establishment to verify the description of the clerk.
11. Officers should advise the vendor or agent at the time of the buy or on the same night (within 2 hours) when practical. At that time, the name of the clerk, licensee information, etc. can be obtained.
12. An officer should mark the evidence purchased by the decoy and ensure that the decoy has also marked the evidence.

13. The police agency should be prepared to testify at the MLCC hearing on the nature and background of the decoy operation including who was involved, why the operation was conducted, why certain establishments were chosen, the number of establishments contacted during the operation, and the number of violations arising from the overall operation.
14. The decoy should be prepared to testify to the events of the operation.

Content of the Report

As with all MLCC violations, make the LC-600 report as detailed as possible since many violations are acknowledged by mail, and the Commissioners need as much information as possible to render a decision.

The decoys age and date of birth must be included on reports sent to the MLCC.

Note: Be aware that copies of all information submitted with a violation report and a copy of the violation report is sent to the licensee who was cited.

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Intoxicated Patrons

Identifying Intoxication

The outward appearance and conduct of a person who appears to be intoxicated is a vital factor in establishing that the Michigan Liquor Control Code and Rules were violated by the licensee.

MLCC violations regarding intoxication are much different than those used for Motor Vehicle violations. Breathalyzers are seldom placed into testimony at MLCC hearings or administered to patrons at licensed establishments. There is no standard BAC number that constitutes visible intoxication. Therefore, law enforcement officers must rely on observations of the outward appearance and conduct of a patron to substantiate violations.

The following are some standard terms used for describing a visibly intoxicated person:

- Ž Slurred speech
- Ž Loss of coordination (stumbling, impaired judgment)
- Ž Volume of voice increases
- Ž Unusually subdued or boisterous behavior (hostile, raunchy, argumentative)
- Ž Strong odor of intoxicants
- Ž Flushed appearance
- Ž Bloodshot eyes

Law and MLCC Administrative Rules

Both the Liquor Control Code and the MLCC rules prohibit serving alcoholic beverages to visibly intoxicated persons. The following is an inclusive listing of the violations.

It is a violation for a licensee to directly, individually, or by a clerk, agent or servant, sell, furnish, or give alcoholic liquor to...a person who is visibly intoxicated.® MCL 436.1801(2), 436.2025(3) and Rule 436.1005(1)

A licensee may not allow intoxicated persons to consume alcoholic beverages on licensed premises. Rule 436.1005(2)

A licensee or employee shall not be intoxicated. Rule 436.1005(3)

Note: Police may not be able to remove an intoxicated licensee or worker from the premises or force closure of premise, unless removal is necessary for health, welfare, safety of the general public, or as provided by local ordinance.

Penalties

Penalties for licensees (clerks cannot be charged) selling alcohol to a visibly intoxicated customer are serious violations.

Ž Misdemeanor - 436.1909 Violation of act as misdemeanor; penalties; legislative intent. (2) Except as otherwise provided in this act, a licensee who violates this act, or a rule or regulation promulgated under this act, is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500.00, or both.

Ž MLCC Violations/Fines, Suspensions or Revocations

Ž A licensee who sells or furnishes alcoholic beverages to a visibly intoxicated person is liable for a fine up to \$1000, suspension, or revocation of the license (under MCL 436.1801(2) only).

Ž A licensee who allows a visibly intoxicated person to consume alcoholic beverages or loiter on the licensed premises is liable for fine up to \$300, suspension, or revocation of the license. (Rule 436.1005)

On the Violation Report

Establishing a violation for serving a visibly intoxicated patron rests on the observations of the police officer or others that can be brought in as witnesses. Law enforcement officers should follow the guidelines below when writing a violation.

1. The specific charge should explain if the violation was a sale to an intoxicated person, allowing an intoxicated person to consume, etc.
2. The intoxicated person's description is needed, as well as an explanation of whether the intoxicated person was a customer, an employee of the establishment, the licensee, or someone else.
3. Describe the person's actions and appearance that led to the determination of intoxication.
4. Describe means of proving that the beverage served was alcoholic liquorCdescribe sample or evidence that was seized, container poured from, and results of laboratory analysis.
5. Identify who served the intoxicated person.
6. List names and addresses of witnesses who saw the intoxicated person served or consuming alcohol.

Hours of Operation

Laws and MLCC Administrative Rules

The licensee may not sell, give away, or furnish alcoholic beverages between the hours of 2:00 am and 7:00 am Monday through Saturday. Rules 436.1403 and 436.1503

A licensee may not allow beer, wine or liquor to be sold on Sunday between 2:00 am and 12:00 noon. Rules 436.1403 and 436.1503

A licensee may not sell, give away or furnish **liquor** between noon and midnight on Sunday unless they are issued a Sunday Sales Permit by the MLCC. MCL 436.2113

A licensee may not sell, give away, or furnish any alcoholic beverages between the hours of 9:00 p.m. on December 24 and 7:00 am December 26. *If December 26 is a Sunday prohibition extends until 12 noon R436.1403(4).* On-premises licensees may not sell, give away or furnish alcoholic beverages between 4:00 am and 7:00 am on New Year's Day (R 436.1403). Off-premises licensees may not sell, give away, or furnish alcoholic beverages between 2:00 am and 7:00 am on New Year's Day (R 436.1503).

Unless prohibited by local ordinances, alcoholic beverages may be sold on Election Day during regular hours. Check with the local governmental body (city council, township board, etc.) to determine whether a licensee may sell alcoholic beverages on election days. MCL 436.2113(5)

An on-premises licensee may not allow anyone (including that licensee or any employee of the licensee) to consume alcoholic beverages on the licensed premises between 2:30 am and 7:00 am Monday through Saturday, between 2:30 am and 12:00 noon on Sundays, after 9:30 p.m. on December 24, or after 4:30 am on January 1. Rule 435.1403

An on-premises establishment shall not be occupied after legal consumption hours by anyone except the licensee, bona fide employees of the licensee who are working, or bona fide contractors and their employees who are working. Rule 436.1403

Note: *An exception to this rule may be granted if the licensee has a proper permit (see licenses and permits chapter). For A-Hotel , B-Hotel and club licenses which provide bedrooms or suites for hotel guests or for bona fide club members and their guests, the rule only applies to rooms open to the general public or club members and their guests for eating, drinking or amusement where alcohol is served.*

Penalties

A licensee is liable for a monetary fine of up to \$300 per offense. The Commission may, upon any violation, suspend or revoke a license.

On the Violation Report

There are three distinct types of violations regarding hours of operation: Sales at other than legal hours; consumption at other than legal hours; and premises occupied at other than legal hours. The following information should be included in the violation report.

1. Establish the exact time of the violation by checking with radio, telephone or other source of official time. Note the exact time of violation on the report. *Note: Hours of Sale violations typically occur early in the morning (i.e. after 2:30 am). Officers should make sure they list the correct date.*
2. Seize the alcoholic beverage sold or being consumed. List the type and brand of alcohol consumed on the report. List the price paid for the alcoholic beverage. Determine that an open drink contains alcohol by using the following guidelines.
 - ✓ taking a sample (pour into evidence container) and removing ice. Send to the toxicology lab as soon as possible. *Note: If an officer is not carrying an evidence container, they should confiscate the opened bottle or glass being consumed from as evidence and send it to the toxicology lab as soon as possible.*
 - ✓ Seizing unopened container
 - ✓ Observing preparation from bottle or tap

3. Include the name and address of the person(s) consuming alcoholic beverages, to whom the sale was made, or who was occupying the premises after hours. Also list the name of the person making the sale or serving the alcoholic beverage after hours. List the name of the person in charge of the establishment at the time of the violation.
4. State whether the violation is based upon observation or personal purchase by reporting officer.

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Nudity/Sexual Acts

Laws and MLCC Administrative Rules

An on-premises licensee shall not allow in, or upon the licensed premise, a person who exposes to public view the pubic region, anus or genitals or who displays other types of nudity prohibited by statute or local ordinance. Rule 436.1409(1)

Likewise, an on-premises licensee shall not allow the showing of films, television, slides, or other electronic reproduction which depicts scenes whereby a person is exposing, to public view, the above mentioned areas. Rule 436.1409(2)

A licensee shall not allow any person on the premises who performs or simulates performances of sexual intercourse, masturbation, sodomy, bestiality, fellatio or cunnilingus. Rule 436.1411

Rule 436.1411(2) prohibits any electronic reproductions, which depict any of the performances listed above.

Note: The prohibition of Rules 436.1409 and 1411 does not apply to any publicly broadcast television transmission from a federally licensed station. These include any station transmitted to the public free of charge. However these rules do apply to programming obtained from a purchased cable hook-up (HBO, Cinemax, etc.). video cassettes, or films.

A Topless Activity Permit is required under MCL 436.1916 when the female breast area including the nipple or more than 2 of the area of the breast, is directly exposed or exposed through see-through clothing at any time by anyone, ie. performer, waitstaff, patron.

An entertainment permit is required for a licensee to allow dancing by performers, monologues, dialogues, motion pictures, still slides, closed circuit television, contests or other performances for public viewing on the licensed premises. MCL 436.1916(1)

Note: Entertainment permits are not required for singing or playing of musical instruments, or for showing publicly broadcast television shows.

A licensee may not allow dancing by customers or employees on the licensed premises unless a dance or dance-entertainment permit is acquired first. MCL 436.1916(2)

Subsection (5) of MCL 436.1916 states that the activities allowed by dance, entertainment, or dance-entertainment permits are allowed on the licensed premises only during the same times that alcoholic beverages may be sold and consumed.

Penalties

Licensees can be fined up to \$300 per offense for violation of nudity or sexual acts. The Commission may, upon any violation, revoke or suspend a license.

On the Violation Report

The following information should be included on the violation report when a violation of nudity or sexual acts is observed.

1. Specify exactly how an MLCC Administrative Rule was violated.
2. Include the name(s) and address(es) of person(s) violating the MLCC Administrative rules.
3. If a simulated sexual act is the basis for the citation, describe which portion of the rule was violated (e.g. masturbation, sodomy, etc.) and be extremely descriptive in stating the behavior of the performer which led to the violation.
4. If electronic reproduction is the basis for the citation, seize the tapes, films, etc. as evidence. Electronic equipment used for reproduction should be seized only if necessary as evidence for the violation hearing.

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Contests

Law and MLCC Administrative Rules

A licensee may not participate in or sponsor any contest which requires consumption of alcohol or features alcohol as a prize or in any connection with a prize. Rule 436.1019 and 436.1435 (2)

Note: Non-licensed persons, holders of special (24 hour) licenses, and club licenses are allowed to offer and award unopened alcoholic liquor valued at less than \$200 in a drawing, a raffle, or as a door prize. Under Provisions of the MCL 436.2015(1), these exceptions are permitted provided the liquor is awarded to someone who is at least 21 years old and not intoxicated, the award is made at a lawful fundraising activity, and the alcoholic beverage is not consumed on the premises where awarded.

An on-premises licensee is prohibited from furnishing prizes in excess of \$250/day for contests (except with written permission from the MLCC), and they are prohibited from accepting anything of value from a person in exchange for sponsoring or promoting a contest or tournament, Rule 436.1435(1)

A licensee is prohibited from sponsoring a promotion on the licensed premises in which anything of value is given away, unless written permission is given by the MLCC. Rule 436.1435(3)

Penalties

A licensee who is found in violation of rules relating to a contest may be fined up to \$300 per offense. A Commissioner may suspend or revoke the license.

On the Violation Report

Law enforcement officers should follow the guidelines below when writing violations for contests.

1. The charge should be specific and should state the exact violation(s) observed.
2. List names and addresses of all persons involved in the prohibited activity. Specify how each person was involved.
3. Note the date and time of the violation(s).
4. Seize any device or other evidence showing that a contest was held.

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Gambling

Law and MLCC Administrative Rules

A licensee shall not allow unlawful gambling on the licensed premises. Rule 436.1013(1) Examples would be Football pools, pull tabs, raffles, card games for money, slot machines, etc.

A licensee shall not allow any gambling devices on the licensed premises which are prohibited by statutes of this state ie., break open tickets, slot machines, football pool sheets, etc. Rule 436.1013(2)

Note: Charitable gaming such as Millionaire Parties, Raffles, and Bingo are allowed for non-profit organizations. A special license from the Bureau of State Lottery is required prior to conducting any charitable gaming event. A properly licensed charitable gaming event can be conducted on any licensed premises.

Penalties

A licensee who is found in violation of rules relating to gambling may be fined up to \$300 for each violation. A Commissioner may suspend or revoke the license.

On the Violation Report

Law enforcement officers should follow the guidelines below when writing violations for gambling.

1. The charge should be specific and should state the exact violation(s) observed.
2. List names and addresses of all persons involved in the prohibited activity. Specify how each person was involved.
3. Note the date and time of the violation(s).
4. Seize any illegal gambling devices used and list these items on the report. Also, seize all money involved in gambling.
5. Three very important criteria are needed to establish a violation.
 ~~3~~ Consideration of money was required to participate.
 ~~3~~ Chance or luck, not skill, determines the winner.
 ~~3~~ Prize of money or other thing of value was awarded.
6. State that no charitable gaming license was issued.

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Controlled Substances

Law and MLCC Administrative Rules

A licensee shall not allow the sale, possession or consumption on the licensed premises of any controlled substance (prohibited by Act No. 368 of the Public Acts of 1978 as amended in ' 333.1101 et. seq. of the Michigan Compiled Laws). Rule 436.1011 (5d)

A licensee shall not allow narcotics paraphernalia to be used, stored, exchanged or sold on the licensed premises. Rule 436.1011(5e)

Penalties

A licensee who is found in violation relating to controlled substances may be fined up to \$300 for each violation. A Commissioner may suspend or revoke the license.

On the Violation Report

Law enforcement officers must prove two things to establish a violation: show that the licensee or employees were involved or had knowledge of the action and must prove that narcotics paraphernalia was found on the licensed premises.

1. The charge should be specific and should state the exact violation(s) observed.
2. List names and addresses of all persons involved in the prohibited activity and how each person was involved.
3. Note the date and time of the violations.
4. Indicate any evidence that the licensee or employee knew (or should have known) the violation was occurring. If similar violations have happened before at this establishment, list dates and circumstances of each previous occurrence as well as any prior warnings given to the licensee or staff.
5. Seize all drug paraphernalia found on the licensed premises.
6. Summarize any criminal proceedings that result from the violation(s). List upcoming court dates and include certified copies of any case depositions.

Prohibited Activities

The following section discusses further the responsibilities of licensees. These responsibilities refer to illegal conduct on the premises, obstructing investigators or enforcement officers, committing felonious and other crimes, impersonating officers, allowing annoyances, fighting, prostitution on the premises, and selling alcohol off the premises.

Law and MLCC Administrative Rules

A Licensee shall not allow the annoyance or molesting of patrons. Rule 436.1011(5a)

A Licensee shall not knowingly allow licensed premises to be used for prostitution. Rule 436.1011 (5b)

A Licensee shall not allow fights, brawls or improper use of firearms, knives or other weapons. Rule 436.1011 (5c)

A licensee shall not sell, offer or keep for sale, furnish, possess or allow a customer to consume liquor which is not authorized by the license issued to the licensee by the commission. Rule 436.1017(1)

Note: One example of Rule 1017(1) would be for a tavern owner (who is licensed to sell beer and wine) to serve or allow customers to bring in and consume spirits (with more than 21% alcohol content).

A licensee shall not knowingly sell or furnish alcoholic liquor to a person who maintains, operates or leases premises which are not licensed by the commission and upon which other persons unlawfully engage in the sale or consumption of alcoholic liquor for a fee or other valuable consideration. Rule 436.1017(2)

Note: An example of a violation of Rule 1017(2) would be for a party store clerk to knowingly sell and deliver a keg of beer to a college fraternity house which was advertising a beer bust charging \$2 admission, and serving underage persons Call without a license.

A licensee or agent of a licensee shall not engage in any illegal conduct or occupation on the licensed premises. Rule 436.1011(1)

A licensee, or agent of a licensee, shall not hinder or obstruct a law enforcement officer, or commission inspector or investigator, in the course of inspecting the premises or in the officer's duties to enforce the liquor control code or commission rules. Rule 436.1011(3)

A licensee, an officer of a corporation, a stockholder of a privately held corporation or a member or manager of a limited liability company shall not, on or off its licensed premises commit the following:

- ☒ felony;
- ☒ a crime involving the excessive use of alcoholic liquor;
- ☒ a crime involving gambling, prostitution, weapons, violence, tax evasion, fraudulent activity or controlled substances;
- ☒ a misdemeanor of such nature that it impairs, or may impair, the ability of the person to operate the licensed business in a safe and competent manner;
- ☒ any of the offenses specified in this Rule which results in sentencing after a plea of nolo contendere.

Rule 436.1011(2)

Note: Notify MLCC immediately after a charge has been brought against a licensee. Do not wait until guilt or innocence has been determined.

A licensee, or agent of a licensee, shall not impersonate a commission employee, commission investigator, or a law enforcement officer empowered to enforce the MCL or MLCC rules. Rule 436.1011(4)

Delivery of pre-ordered alcoholic liquor from off-premises licensee to a customer is allowable; however, delivery shall not be made to a two or four year college or university unless the customer is issued a Special License by the Commission. Rule 436.1011(6)(b)

Alcoholic liquor sold by vendors for consumption on the premises shall not be removed from the premises. MCL 436.2021

Licensees shall have a sign which lists the total capacity of each public room in the establishment. Licensees shall not allow a public room of the licensed establishment to be occupied by more persons than are listed on the sign. The capacity stated by each sign is determined by guidelines listed by this Rule. Rule 436.1405.

An off-premises licensee who is not licensed as an on-premises licensee shall not have any open containers of alcoholic liquor on the licensed premises, except for defective or sample bottle or can. Rule 436.1511.

An off-premises licensee shall not allow consumption of alcoholic liquor on the premises, except for sample bottles or cans. Only the licensee, clerk, servant, or employee of the licensee may consume the contents of the sample on the premises. Rule 436.1511.

An off-premises licensee shall not knowingly allow a person to consume alcoholic liquor on the property owned, leased or possessed by the licensee which is adjacent to the licensed premises. Rule 436.1523(2).

An off-premises licensee is prohibited from delivering alcohol to anyone under the age of 21. Rule 436.1527

Penalties

A violation for any of the aforementioned prohibited activities may result in a maximum fine of \$300 per violation. A Commissioner may suspend or revoke a license after any violation.

On the Violation Report

1. To establish that a violation has occurred for rules relating to the prohibited conduct of licensees, agents, or employees, a law enforcement officer must show that an illegal act has been committed (in the case of fighting, the officer must prove that the fight was inside the establishment). A certified copy of a conviction will serve as evidence.
2. To establish that a violation related to fighting, brawling, or the improper use of any weapon has occurred, a law enforcement officer must prove that the licensee allowed the fighting or the weapons on the licensed premises. An eye witness account and the names and addresses of the participants and witnesses will serve as evidence.
3. If a conviction is for violating a local ordinance, attach a copy of the ordinance and a copy of the conviction to the violation report. *Note: The MLCC does not enforce local ordinances. A conviction of a violation of a local ordinance must be obtained before citing the licensee to the Commission (unless, of course, state law or MLCC rules are also violated simultaneously).*
4. If a rule or law states that prior to conviction of a complaint, a licensee must have knowingly allowed the prohibited activity to occur, then the law enforcement officer should focus their attention on providing evidence that supports the claim that the licensee was aware of the violation or a participant in the violation.

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Miscellaneous Violations

The following Administrative Rules are generally investigated by MLCC enforcement. They require further information than most police have access to. If a law enforcement officer feels that a licensed establishment may be violating one of the following rules, it is suggested that the MLCC be notified to assist or perform the investigation.

Law and MLCC Administrative Rules

All licensees are prohibited from purchasing beer, wine or liquor from unauthorized sources. All retail licensees must buy beer and wine from their designated licensed wholesalers. Rule 436.1033.

All liquor must be purchased from the state and delivered by an authorized distributing agent. MCL 436.1205

All licensees are prohibited from selling alcoholic beverages below cost. Rule 436.1055

All licensees are prohibited from adulterating or misbranding alcoholic liquors. They may not refill bottles with either the same brand or a different brand. MCL 436.2005(1)

An SDD may not sell packaged liquor at any price other than the price established by the MLCC. MCL 436.1229, MCL 436.1233(1), Rule 436.1529

On-premises licensees shall only serve and sell the brand of alcoholic liquor that a person orders. R436.1431

An on-premises licensee may not sell or advertise an unlimited quantity of alcoholic beverages at one price (i.e. All you can drink@specials). Rule 436.1438

An on-premises licensee may not sell or advertise multiple drinks for one price. When two or more identical alcoholic drinks are served to one person at one time, each must cost the same price. Rule 436.1438

A licensee shall not obtain a license for the use or benefit of another person whose name does not appear on the license, nor shall a licensee allow a person whose name does not appear on the license to use or benefit from the license. Rule 436.1041(1)

All licensee shall not enter into a participating agreement where a person not licensed by the commission receives more than 10% of the gross sales of the licensed business. Rule 436.1041(2)

A Club licensee may only sell alcoholic beverages to bona fide members of the club. MCL 436.1537(1)(c).

Penalties

Licensees in violation of any of the rules referred to in this section may be fined up to \$300 per offense. Suspension or revocation of the license is possible for any violation of the MLCC Administrative Rules or Liquor Control Code.

On the Violation Report

These types of violations are typically written by the MLCC. If a law enforcement officer feels that a rule has been violated, the officer must report the incident to the MLCC using a LC-600 Form.

q SECTION THREE: THE VIOLATION REPORT

Law Enforcement officers should make certain to fill out the MLCC violation report with as much accuracy as possible. This will increase the chances of gaining a conviction and enable the Commissioners or Administrative Law Judges to form knowledgeable opinions and assess appropriate penalties. The Violation Report LC 600 is available from the Commission at each district office or is available for download at www.michigan.gov/dleg

A Violation Report (LC-600) must be submitted for any incident to be used as basis for a formal complaint by the Attorney General's office. Violation Reports sent to MLCC should include :

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The Front of the Report

1. Name and address of licensee (the individual, limited liability company , general partner of a limited partnership, or corporate name if a corporation holds the liquor license). Include the name of the village, city, or township, the zip code, and the name of the county.

Note: *In the case of corporate licensees, be careful to show the corporate nameCnot the name of the individual. This information appears on the liquor license which the licensee or employee must publicly display. Law Enforcement officers should make sure they include the business ID number for the license.*

2. Trade name of the establishment (e.g. John Doe's Bar) under ADoing Business As:@. This name may differ from the legal name.
3. Type of license held by the licensee (e.g. AClass C@) and any permits issued (such as ASunday Sales@or AFood@).
4. A brief description of the violation you are reporting.
5. The specific date and time the violation was observed.

Note: *It is extremely important to monitor the time during a violation because recall of time is often used as evidence or questioned during a hearing.*

6. All material facts of the case, including any statements made by the licensee, person in charge of the establishment, employees and any other people involved in the violation. You can attach a copy of the incident report if it is all inclusive.

Note: *The MLCC is required to send copies of the entire violation report, including copies of incident reports if they are attached, to the licensee when they are notified of the complaint. If there is something in your incident report that you do not want released to the licensee do not include the report.*

7. Name and title (e.g. bartender) of person in charge when the violation occurred.
8. Names of the people who committed the violation, and the names of any witnesses.
9. Name of the person notified that a Violation Report would be submitted to the MLCC.
10. Sign the reportCthe officer filing the report must sign it.
11. Also type or print your name and rank. Include the name, address and telephone number of your department. (This applies to all officers signing the report.)

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On the Back of the Report

12. Names and addresses of witnesses to be subpoenaed, and names of police officers who are to testify at the hearing.
13. Write a brief statement describing the testimony you expect from each witness and officer.

14. Describe what evidence was obtained at the scene of the violation. Be sure to maintain your chain of evidence, and bring your evidence to the MLCC hearing.

Note: Any other information relevant to the case, or evidence that supports the charge that a violation of the Liquor Control Act or MLCC Administrative Rules occurred should be included in the Violation Report or attached to it. Previous warnings to the licensee of violations should be noted. Be as specific as possible in your report.

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Detailed Description of the Events

An officer is expected to describe the events leading up to the violation in as much detail as possible. If a licensee acknowledges a violation (pleads guilty), an MLCC Commissioner must rely solely on the violation report when issuing a penalty. A precise and thorough report of the incident increases the ability of a Commissioner to assess a penalty.

Law enforcement officers have been trained to write very detailed incident reports for police files, but on some occasions at the Commission, they will submit violation reports with insufficient detail of the events leading up to the MLCC violation. To ensure that details are not overlooked and to convenience law enforcement officers, the incident report may be copied and attached to the violation report. The name, address, etc. should still be filled out on the violation report; however, the description of the events that occurred can be substituted with the incident report.

NOTE: A copy of the entire report along with other documents (police reports submitted to MLCC) is given to the licensee prior to a hearing. Therefore, confidential information should not be included with materials sent to the MLCC.

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Submitting Reports

Send Report Quickly

A law enforcement officer should submit an MLCC violation as soon as an incident occurs. If a violation is submitted expediently, MLCC will be able to schedule a hearing date that is more proximate to the violation date, which will increase the chances that witnesses will show up.

Officers should keep MLCC abreast on criminal offenses by licensees within their jurisdiction. A certified copy of a conviction is prima facie evidence of a violation of Rule 436.1011(2) below.

For example, it is a violation of the MLCC rules for a licensee to be convicted of driving while intoxicated. A law enforcement officer should notify the MLCC of the charge directly after the incident occurs, even though the person has not had a trial or been convicted of a crime. The reason for this early notification is that the Commission will take into account any pending charges against a licensee if a licensee tries to transfer or sell their license.

q SECTION FOUR: HEARINGS AND APPEALS

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Procedure

The following information will clarify the procedure that occurs after a violation report is written and submitted to the MLCC.

Hearings and Appeals Unit

When a violation report is submitted to the MLCC, it is processed by the MLCC Hearings and Appeals unit. This unit records the violations in their tracking system and verifies the license information. When the information has been recorded and researched, the Hearings and Appeals unit forwards the information to the Attorney General's Office.

Attorney General's Office

The Attorney General's Office reviews the violation report and all relevant information to decide whether there is enough evidence to issue a formal complaint. If there is insufficient evidence, the AG's office will close the case and both the licensee and the agency that sent the complaint are notified of the decision. If they decide that there is enough evidence to issue a complaint, it will go through the violation complaint process.

Violation Complaint Process

The violation complaint process begins with notification to the licensee of the complaint. The licensee can either acknowledge the complaint or can choose to contest the charges. If the licensee acknowledges the complaint, the complaint and acknowledgment are sent to the Hearings Commissioner or Administrative Law Judge for review and assessment of penalty. If the licensee does not acknowledge the complaint, a hearing is set.

MLCC Hearing

An MLCC hearing is an administrative hearing involving a representative from the Attorney General's office, the licensee, and if the licensee chooses, a defense attorney. Like a criminal trial, burden of proof rests with the prosecution at MLCC hearings.

Decision

The Commissioner's role is similar to that of a judge's during a criminal trial. The Commissioner listens to the testimony from both sides during the hearing and makes a decision based on testimonies, facts of the case, and the laws or rules that are involved. Judgment is rendered solely by the Commissioner or Administrative Law Judge, who has 45 days to make that decision.

Appeal Process

After a finding of responsibility by the Commissioner or Administrative Law Examiner, the licensee may appeal the verdict or the penalty. The appeal is taken to the MLCC Appeal Board. No further testimony may be brought into account at the Appeal Board. Only the transcripts of the previous hearing may be looked at. A licensee is given an opportunity to express why they feel the penalty is too severe. If the Appeal Board agrees with the decision of the Commissioner, and the licensee still feels aggrieved, the licensee may make further appeals to Circuit Court, and continue on to the Court of Appeals, then to the Michigan Supreme Court, then finally, the Federal Courts.

Penalties

The severity of penalties that Commissioners assess will generally depend on the nature of the violation, the participation or knowledge level of the licensee, and number of times the licensee has previously been found responsible for a violation. A Commissioner has the authority to assess different types of penalties, including: Fines, Fees, Suspensions, Revocation, Warnings.

Fines

Commissioners are able to assess fines up to \$1000 for each violation of MCL 436.1801(2) of the Liquor Control Code. This section refers to direct sales to minors and intoxicated persons. A maximum fine of \$300 may be imposed for any other violation. Fees above and beyond the fines may also be assessed.

Suspensions and Revocations

A Commissioner or authorized agent may, after due notice and proper hearing, suspend or revoke a license upon violation of the MCL or MLCC rules (MCL 436.1903(1)). There is no specific number of violations that must occur before a suspension or revocation can be ordered.

If a Commissioner's ruling calls for a suspension of a license, the licensee may not sell, furnish, consume, possess, or allow alcohol to be consumed on the premise throughout the duration of the suspension. Law enforcement officers will be asked by the Commission to post a notice of suspension in a conspicuous place on the licensed premise in full view of the public.

The local law enforcement agency may also be asked to pick up the license from the suspended party and return it when the suspension ends. Under a suspension, a licensee may remain open for business without the sale or service of alcoholic liquor. There can be no consumption on the premises.

If a Commissioner or duly licensed agent orders a revocation of a license, all privileges that were granted upon receipt of the license are now forfeited. The Commission will seize all alcoholic liquor found in the possession of the licensee and remit to the licensee the purchase price of the alcohol less 10%. MCL 436.1907(1), (2)

If a license to any person is revoked due to a violation of the MCL or MLCC rules, that person must wait a period of two years, after order becomes effective, to be considered for a new license. MCL 436.1907(3)

Any permits or privileges granted to the licensee may be revoked or suspended, after due notice and proper hearings, if the licensee or establishment no longer qualifies for the permits or privileges, or if the licensee is in violation of the MCL or MLCC rules which directly pertain to the permits issued or privileges given. Rule 436.1061

Penalty Hearing

If a licensee has been found liable, within a 24 month period, for 3 or more separate violations of MCL 436.1801(2), with the violations occurring on different occasions, a Penalty Hearing will be ordered. MCL 436.1801(2) refers to selling, giving or furnishing alcoholic liquor to minors or intoxicated patrons.

The Penalty Hearing acknowledges the problematic situation and the inability of the licensee to abide by the laws and rules of the Commission. Because of the continuing violation of MCL 436.1801(2), the Commission must either suspend or revoke the license of the establishment.

Any licensee who feels aggrieved by any penalty or decision imposed through a Penalty Hearing may appeal the decision to the Circuit Court.

Police Responsibilities

Law enforcement officers have an integral role in convicting a licensee of a violation. The Attorney General's office will rely on police testimony and assistance in cases where observation, expertise, and ensuring the attendance of witnesses are key components.

Testimony

Police may be asked to do any of the following with regards to giving testimony:

- ✓ Testify to personal observations made
- ✓ Provide physical evidence when necessary and show integrity of chain of evidence
- ✓ Show expertise in certain cases (e.g. testify as expert in being able to identify a visibly intoxicated person).
- ✓ Be cross examined

Ensure Witness Attendance

Because so many administrative hearings depend on key witness testimony, law enforcement officers are greatly encouraged to help ensure the attendance of witnesses. Many cases are ruled in favor of licensees simply because a subpoenaed witness did not show up to testify.

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Submit Your Best Violation

Selling to Minors

Licensees will argue that the minor presented fraudulent identification that looked authentic. In fact, MCL 436.1701 allows the use of false ID showing a person to be 21 years of age or over to be a defense in any action under that section. It is suggested that police seize the ID of the minor and bring it forth as evidence so a Commissioner or Administrative Law Judge may decide if the licensee was diligent in his or her inquiry of the minor's age and the authenticity of the ID. The minor should also be subpoenaed. Police should help ensure the minor's presence at the trial.

Selling to an Intoxicated Patron

The most common defense to a violation of Rule 1005(1) which prohibits the sale, serving or furnishing of alcohol to a person in a visibly intoxicated condition is the licensee, agent or employee could not tell that the person was intoxicated. If the person displays physical signs such as loud or slurred speech, inability to stand or walk without stumbling, difficulty picking up coins, glossy or bloodshot eyes, inability to coherently answer questions, or breath that smells of alcohol, etc. they are displaying signs of visible intoxication. The critical factor is the outward appearance and conduct of the patron or other intoxicated person, plus corroborating witnesses who can state that a person was visibly intoxicated. **It is important to immediately document the person's behavior and gather witness statements.** After a day or so has passed it will be difficult to locate witnesses and those you do find may not have a precise memory of the person or events.

Allowing Intoxicated Patron to Consume

A licensee who is charged with allowing an intoxicated patron to consume will likely question whether the officer actually witnessed the patron consuming alcohol at the licensed establishment. It is suggested that law enforcement officers should try to view the subject drinking, or receive an admission from the patron that they were served and drank a certain amount of alcohol at the establishment.

After Hours

When charged with occupation of the licensed premise after legal hours (Rule 436.1403(2)), the licensee will commonly respond that everyone who was on the premises after the legal hours were working employees. It is suggested that officers attempt to ascertain the identification of the people and whether they are actually working employees of the licensee, and verify accurate time of the violation. If an officer is not given access to the licensed premises a licensee should be charged under MCL 436.1217 section 217(2) for failure to make the licensed premises available for inspection and search.

Gambling

To prove a charge of gambling, three components are needed:

- Ž **Prize** (money or other thing of value)
- Ž **Chance** (where luck, not skill, determines the winner)
- Ž **Consideration** (money required to participate)

It is recommended that police focus on proving each one of these components through seizure of evidence, observation and admissions.

Overcrowding

When charges of overcrowding are brought against licensees, the defendant often questions the accuracy of the counting method. It is suggested that if overcrowding occurs, police should contact the local fire marshal to ascertain the seating capacity and have him or her testify as an expert witness.

Sexual Activity

In simulated sexual acts violations, a defendant will commonly question the actual behavior of the performer. Officers should describe which portion of the rule was violated (e.g. masturbation, sodomy) and be very descriptive in noting the behavior of the performer which led to the citation.